

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Maura Roche	Team: Squad #10	CCRB Case #: 201902117	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Monday, 11/05/2018 5:49 PM	Location of Incident: Southeast corner of Canal Street and Broadway	Precinct: 05	18 Mo. SOL 5/5/2020	EO SOL 12/20/2020	
Date/Time CV Reported Mon, 03/11/2019 12:20 PM	CV Reported At: CCRB	How CV Reported: In-person	Date/Time Received at CCRB Mon, 03/11/2019 12:20 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Michael Algerio	16263	952394	005 PCT
2. SGT Dongyun Zheng	04228	931480	005 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Timothy Dougherty	17345	958521	005 PCT
2. POM Gregory Scharkopf	02015	949635	005 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Michael Algerio	Abuse: Police Officer Michael Algerio threatened § 87(2)(b) with the use of force.	
B.POM Michael Algerio	Force: Police Officer Michael Algerio tightly handcuffed § 87(2)(b)	
C.POM Michael Algerio	Force: Police Officer Michael Algerio used physical force against § 87(2)(b)	
D.SGT Dongyun Zheng	Force: Sergeant Dongyun Zheng used a chokehold against § 87(2)(b)	
E.SGT Dongyun Zheng	Force: Sergeant Dongyun Zheng restricted § 87(2)(b)'s breathing.	
F.POM Michael Algerio	Abuse: Police Officer Michael Algerio failed to check the tightness of the handcuffs.	

Case Summary

On March 11, 2019, § 87(2)(b) filed this complaint with the CCRB in-person. § 87(2)(g)

On November 5, 2018, at approximately 5:49 p.m., at the intersection of Canal Street and Broadway in Manhattan, PO Michael Algerio and Sgt. Dongyun Zheng, both of the 5th Precinct (PO Algerio has since been transferred to Patrol Borough Manhattan South), approached § 87(2)(b) and arrested him for § 87(2)(b) (BR 01). PO Algerio told § 87(2)(b) to turn around, but § 87(2)(b) refused. When § 87(2)(b) refused to turn around a second time, PO Algerio put his hand on his Taser and allegedly told § 87(2)(b) that if § 87(2)(b) did not turn around, he would Tase him (Allegation A: Abuse of Authority – Threat of Force, § 87(2)(g)). § 87(2)(b) turned around, and PO Algerio handcuffed him tightly. When § 87(2)(b) told PO Algerio that the handcuffs were too tight, PO Algerio told § 87(2)(b) that he would loosen the handcuffs. Instead, PO Algerio allegedly made the handcuffs tighter on § 87(2)(b)'s wrists (Allegation B: Force – Handcuffs Too Tight, § 87(2)(g)).

PO Algerio led § 87(2)(b) to a marked SUV, and, as § 87(2)(b) was trying to position himself in the back seat, PO Algerio pushed him into the car (Allegation C: Force – Physical Force, § 87(2)(g)). Sgt. Zheng went to the other side of the car, reached inside, and allegedly put both of his hands around § 87(2)(b)'s neck (Allegation D: Force – Chokehold, § 87(2)(g)). making it difficult for § 87(2)(b) to breathe (Allegation E: Force – Restricted Breathing, § 87(2)(g)). Despite § 87(2)(b) complaining that his handcuffs were too tight throughout the incident, PO Algerio did not check whether the tightness was appropriate or excessive (Allegation F: Abuse of Authority – Other – Failure to check the tightness of handcuffs, § 87(2)(g)).

Cell phone video of the incident (BR 02) is discussed below. There was no body-worn camera footage (BR 03), because the 5th Precinct had not yet received body-worn cameras, or any other video of the incident.

Findings and Recommendations

Allegation (A) Abuse of Authority: Police Officer Michael Algerio threatened § 87(2)(b) with the use of force.

Allegation (B) Force: Police Officer Michael Algerio tightly handcuffed § 87(2)(b)

§ 87(2)(b) (BR 04) stated that on November 5, 2018, at approximately 5:49 p.m., he was standing outside of a coffee shop located at the intersection of Canal Street and Broadway in Manhattan. People § 87(2)(b) did not know were selling clothing and other accessories. § 87(2)(b) denied selling anything.) PO Algerio approached § 87(2)(b) and told him to put his hands behind his back. § 87(2)(b) refused and asked PO Algerio why. PO Algerio told § 87(2)(b) to turn around a second time, and § 87(2)(b) again refused and asked why. PO Algerio put his hand on the top of his Taser, which was affixed to his belt, and told § 87(2)(b) that he would Tase § 87(2)(b) if he did not turn around.

§ 87(2)(b) not wanting to get Tased, turned around, and PO Algerio placed handcuffs on his wrists very tightly. § 87(2)(b) told PO Algerio and Sgt. Zheng that the handcuffs were too tight, and PO Algerio said that he would loosen them. However, instead of loosening the handcuffs, PO Algerio put his hands around the handcuffs and squeezed, which made the handcuffs tighter on § 87(2)(b)'s wrists.

PO Algerio (BR 05) stated that he and Sgt. Zheng were walking on the street when they saw § 87(2)(b) standing next to an open suitcase in which items, he could not recall what, were displayed for sale. PO Algerio approached § 87(2)(b) and asked him if he had a Department of Consumer Affairs

license to sell the items, and § 87(2)(b) said that he did not and had never had such a license. Because § 87(2)(b) did not have the proper licensing, PO Algerio and Sgt. Zheng decided to place § 87(2)(b) under arrest.

PO Algerio told § 87(2)(b) to put his hands behind his back, but, given that they were all standing under some scaffolding, it was difficult for § 87(2)(b) to turn around. PO Algerio stood next to § 87(2)(b) reached his hands behind § 87(2)(b)'s back, took his hands, and handcuffed him. PO Algerio did not ever tell § 87(2)(b) that he would Taser him if he did not turn around and had no recollection of telling § 87(2)(b) multiple times to turn around, or of § 87(2)(b) offering any resistance prior to or as PO Algerio handcuffed him.

PO Algerio stood next to § 87(2)(b) with his hand on § 87(2)(b)'s arm while he and Sgt. Zheng waited for additional units to arrive. While they were waiting, PO Algerio could not recall if § 87(2)(b) ever complained that the handcuffs were too tight or if he requested that the officers loosen the handcuffs. PO Algerio did not ever tighten the handcuffs after initially placing them on § 87(2)(b)'s wrists.

Sgt. Zheng's statement (BR 06) was generally consistent with that of PO Algerio with the following exceptions noted. Upon PO Algerio's initial approach, § 87(2)(b) was compliant with PO Algerio's commands, and Sgt. Zheng never heard PO Algerio ask § 87(2)(b) to turn around multiple times or threaten to use his Taser if § 87(2)(b) refused.

Sgt. Zheng called for additional units because § 87(2)(b) had many items that they needed to transport to the stationhouse as part of the arrest processing. While they were waiting, Sgt. Zheng did not ever hear § 87(2)(b) make complaints about pain in his wrists or about the handcuffs being too tight. Sgt. Zheng did not ever see PO Algerio tighten the handcuffs on § 87(2)(b)'s wrists.

§ 87(2)(b) provided cell phone video (BR 02) of the incident. However, the video begins when § 87(2)(b) is already handcuffed, which is after PO Algerio's alleged threat to Tase him. At 00:05 seconds, PO Algerio is standing next to § 87(2)(b) who is positioned with his back against a wall. Sgt. Zheng is standing approximately three feet in front of § 87(2)(b). PO Algerio's hands are not visible. Beginning at 00:08 seconds, § 87(2)(b) repeatedly says that his handcuffs are too tight. PO Algerio remains standing in the same position, with his right arm hooked under § 87(2)(b)'s right bicep. At 00:39 seconds, the camera pans away from § 87(2)(b) and focuses on Sgt. Zheng. At no point does the video capture PO Algerio's hands on § 87(2)(b)'s handcuffs.

§ 87(2)(g)

§ 87(2)(g)

Allegation (C) Force: Police Officer Michael Algerio used physical force against § 87(2)(b)

Allegation (D) Force: Sergeant Dongyun Zheng used a chokehold against § 87(2)(b)

Allegation (E) Force: Sergeant Dongyun Zheng restricted § 87(2)(b)'s breathing.

The cell phone video (BR 02) of this portion of the incident begins at 1:32 minutes, with PO Algerio walking § 87(2)(b) to the back-passenger seat of a marked SUV. At 1:42 minutes, § 87(2)(b)

§ 87(2)(b) is standing with his back to the open door while PO Algerio stands directly in front of him. By 1:48 minutes, § 87(2)(b) lowers his head down into the marked SUV. At 1:50 minutes, PO Algerio tells § 87(2)(b) “Sit down.” § 87(2)(b) s body position is obscured by PO Algerio. § 87(2)(b) replies, “I’m trying to sit but you’re pushing me.” PO Algerio says again, “Sit down. Sit down.” At 2:41 minutes, Sgt. Zheng walks to the back-driver’s side of the car and out of the frame. The interior of the marked SUV and § 87(2)(b) s body position within the marked SUV are not captured. By 3:04 minutes, Sgt. Zheng returns to where PO Algerio is standing by the back-passenger door. At 1:13 minutes, PO Algerio closes the back door and stands in front of it.

§ 87(2)(b) (BR 04) stated that he wanted to take his time while sitting in the back of the car because his handcuffs were hurting his wrists, and he wanted to find a comfortable position. PO Algerio pushed § 87(2)(b) into a seated positional and then tried to push him further back into the car. § 87(2)(b) could not recall where on his body PO Algerio was pushing him but thought that it was his arms. § 87(2)(b) told PO Algerio not to push him while Sgt. Zheng went to the other side of the car.

Once on the back-driver’s side of the car, Sgt. Zheng reached into the back of the car where § 87(2)(b) was seated and grabbed § 87(2)(b) s neck with both hands with his thumbs on the front of § 87(2)(b) s throat. For fewer than five second, Sgt. Zheng applied pressure to § 87(2)(b) s throat to pull him into the back of the car, which made it difficult for § 87(2)(b) to breathe. No other officers were inside the car when Sgt. Zheng did this. Once § 87(2)(b) was completely inside the car, two other male officers took § 87(2)(b) to the 5th Precinct stationhouse, where he was processed.

PO Algerio (BR 05) stated that when he got to the back-passenger side of the marked SUV, he guided § 87(2)(b) into the seat so that he did not hit his head. PO Algerio did not recall if § 87(2)(b) had requested time to situate himself in the back of the car or if § 87(2)(b) complained about any pain in his wrists. While PO Algerio initially denied ever pushing § 87(2)(b) after viewing the cellphone footage of the incident (BR 02), PO Algerio recalled that § 87(2)(b) had been having difficulty getting into the car, and that PO Algerio may have pushed him into the car. PO Algerio did not recall any other physical contact between himself and § 87(2)(b). PO Algerio did not ever see Sgt. Zheng go into the other side of the car, did not see Sgt. Zheng put his hands on § 87(2)(b) s neck, and did not ever hear § 87(2)(b) complain of pain to his neck or of difficulty breathing.

§ 87(2)(g) Sgt. Zheng did not initially recall if § 87(2)(b) had any difficulty getting into the back of the marked SUV, if he assisted getting § 87(2)(b) in the back of the marked SUV, or if he observed PO Algerio push § 87(2)(b) into the back of the marked SUV. Having viewed the video, Sgt. Zheng remembered that when PO Algerio was helping § 87(2)(b) into the marked SUV, Sgt. Zheng went to the back-driver’s side. § 87(2)(b) s head was inside the marked SUV, and he was seated on the edge of the seat with his legs outside of the car. Sgt. Zheng reached into the back-passenger area, put his arm underneath § 87(2)(b) s arm by the bicep, and pulled § 87(2)(b) a few inches further onto the seat. Sgt. Zheng denied ever making contact with § 87(2)(b) s neck and denied ever restricting § 87(2)(b) s breathing. Sgt. Zheng added that he was at the desk at the 5th Precinct stationhouse when § 87(2)(b) was processed, and § 87(2)(b) made no complaints of pain, or injury, and made no allegations of a chokehold or having difficulty breathing.

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Patrol Guide procedure 221-01 (BR 07) states that force may be used when it is reasonable to

ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody.

§ 87(2)(g)

§ 87(2)(g)

Allegation F: Abuse of Authority: Police Officer Michael Algerio failed to check the tightness of the handcuffs.

In the video (BR 02), § 87(2)(b) consistently claims that his handcuffs are too tight and that they are causing him pain.

Officers are to "value human life, respect the dignity of each individual and render [their] services with courtesy and civility." Patrol Guide section 200-02 (BR 11).

§ 87(2)(g)

Civilian and Officer CCRB Histories

- § 87(2)(b) has been party to three additional CCRB complaints and has been named a victim in 11 allegations (BR 08).
 - § 87(2)(b)
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- Sgt. Zheng has been a member of service for 17 years, and this is the first CCRB complaint to which he has been subject.
- PO Algerio has been a member of service for seven years and has been a subject in three CCRB cases with a total of four allegations, none of which was substantiated. § 87(2)(g)

Mediation, Civil and Criminal Histories

- This case was not suitable for mediation.
- On February 6, 2020, a Notice of Claim was submitted to the Comptroller's office, the results of which will be added to the case file upon receipt (BR 09).

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
[§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
[§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
[§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Squad No.: 10

Investigator: Eric Rigie IM Rigie on behalf of SI Roche 4/28/2020
Signature Print Title & Name Date

Squad Leader: Eric Rigie IM Eric Rigie 4/28/2020
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Date